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Oregon Excavating, Inc. and International Union of Operating Engineers, Local 701. Case 36-CA-9026-1

September 30, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the International Union of Operating Engineers, Local 701 (the Union) on June 3, 2002, the General Counsel issued the complaint on July 31, 2002, against Oregon Excavating, Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the Act. The Respondent failed to file an answer.

On August 30, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On September 4, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by facsimile and certified mail dated August 15, 2002, notified the Respondent that unless an answer was received by August 23, 2002, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a State of Oregon corporation, with its office and place of business in Clackamas, Oregon, where it is engaged in the business of excavation. Dur-

ing the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, purchased and caused to be transferred and delivered to its Clackamas, Oregon facility goods valued in excess of \$50,000 directly from sources outside the State of Oregon. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about May 7, 2002, the Union established a lawful picket line at the Respondent's premises. On May 7, 2002, the Respondent's employee William G. Tsiatsos honored the picket line. On about May 9, 2002, the Respondent terminated Tsiatsos. The Respondent terminated Tsiatsos because he refused to cross the picket line, and to discourage employees from engaging in this or other concerted activities.

CONCLUSION OF LAW

By terminating William G. Tsiatsos because he refused to cross the Union's lawful picket line, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in an unfair labor practice, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by unlawfully terminating William G. Tsiatsos, we shall order the Respondent to offer Tsiatsos full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the termination. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any reference to the unlawful termination, and to notify Tsiatsos in writing that this has been done and that the unlawful termination will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Oregon Excavating, Inc., Clackamas, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating its employees because they refuse to cross the Union's lawful picket line, and to discourage employees from engaging in this or other concerted union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer William G. Tsiatsos full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make William G. Tsiatsos whole for any loss of earnings and other benefits suffered as a result of his unlawful termination, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful termination of William G. Tsiatsos, and within 3 days thereafter, notify him in writing that this has been done, and that the unlawful termination will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Clackamas, Oregon, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 36, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility

involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 9, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2002

Wilma B. Liebman, Member

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT terminate our employees because they refuse to cross the International Union of Operating Engineers, Local 701's lawful picket line, or to discourage other employees from engaging in this or other concerted union activity.

WE WILL NOT, in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer William G. Tsiatsos full reinstatement to his

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make William G. Tsiatsos whole for any loss of earnings and other benefits suffered as a result of his unlawful termination, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful termination of William G. Tsiatsos, and WE WILL within 3 days thereafter, notify him in writing that this has been done, and that the unlawful termination will not be used against him in any way.

OREGON EXCAVATING, INC.